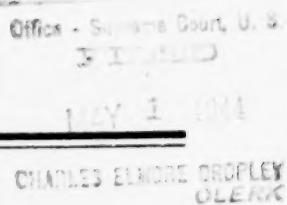


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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. **61**

THE DOW CHEMICAL COMPANY, A CORPORATION,
Petitioner,
vs.

HALLIBURTON OIL WELL CEMENTING COMPANY,
A CORPORATION,
Respondent.

**PETITIONER'S REPLY TO RESPONDENT'S CROSS
PETITION.**

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April 25, 1944.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1943.

No. 895

THE DOW CHEMICAL COMPANY, A CORPORATION,
Petitioner,
vs.

HALLIBURTON OIL WELL CEMENTING COMPANY,
A CORPORATION,
Respondent.

**PETITIONER'S REPLY TO RESPONDENT'S CROSS
PETITION.**

While this Court has undoubted authority to review any questions presented by the record, there is ample precedent for limiting the questions to be considered on a Writ of Certiorari. For example, in *Automatic Devices Corporation v. Sinko Tool & Manufacturing Co.*, 314 U. S. 94, and *Automatic Devices Corp. v. Cuno Engineering Corp.*, 314 U. S. 84, the review was limited to the single question of validity, as to which there was a divergence of view between two Circuit Courts of Appeals. The particular infringement issue, upon which only the Court of Appeals of the Seventh Circuit had passed, was excluded.

In the suit on the Grebe and Sanford patent here in issue, brought in the Tenth Circuit where the patent was held valid, defendant precisely copied the patent so no question of infringement was involved.

In the instant case, defendant somewhat varied from the procedure of the patent and so for the first time, infringement became an issue. A vast amount of testimony was

taken on that question, probably more than half of the voluminous record being devoted to that subject. Both the District Court, and the Circuit Court of Appeals, agreed in finding that defendant had appropriated any invention which might be present in the patent in suit.

According to our understanding of the practice, when two Courts of Appeals differ on the validity of a patent, this Court re-examines the facts so far as is necessary to reach a proper conclusion.¹ On the other hand, when a separate issue like infringement has arisen in only one case, and in that case the District Court and the Court of Appeals concur in their conclusions, this Court customarily does not re-examine the facts.²

The new issue of infringement, raised for the first time in the instant case, and decided by both Courts in our favor, involves a technical study of involved evidence. It is all boiled down in the following brief extract from the decision of the Court of Appeals:

"The appellee's acid in its initial state has no inhibitor added to it. It is transported to the wells in steel containers on the inside of which a number of lead sheets are brazed. A battery action is thereby set up and minute quantities of dissolved iron and copper are deposited on the inside of the steel container, forming a protective coating. An acid solution of about fifteen per cent concentration is used by the appellee, and

*v. lead and
chlorides
ord. p 205.4)*

1. *Thompson Spot Welder Co. v. Ford Motor Co.*, 265 U. S. 445, 447.
Sanitary Refrigerator Co. v. Winters, 280 U. S. 30, 34.
Concrete Appliance Co. v. Gomery, 269 U. S. 177, 180.
2. *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405.
Pick Mfg. Co. v. General Motors Corp., 299 U. S. 3.
General Talking Pictures Corp. v. Western Electric Co., 304 U. S. 175, 178.
Alabama Power Co. v. Ickes, 302 U. S. 464, 477.
Washington Securities Co. v. United States, 234 U. S. 76, 78.
Just v. Chambers, 312 U. S. 383, 385.

when the acid is inserted in the tubing of the well, the copper^{LEAD} and iron^{CHLORIDES} dissolved therein act to reduce corrosion from forty to sixty per cent. Although no chemical action is present between the hydrochloric acid and the arsenic compounds which are used by appellant as inhibitors, as is the case in appellee's process, the District Court found, we think correctly, that appellee infringes if the patent is valid. There is no substantial difference between the results secured by the appellee and that secured by appellant, and the method used is essentially the same."

There is no difference of opinion on this point, and we respectfully submit that under its established practice, this Court should accept this much of the decision below. Certainly to do so would very greatly simplify the study of the case.

Of course there are cases where validity and scope are so inter-related that it is difficult to consider one question without considering the other. This is not such a case. Either the subject matter claimed in the Grebe and Sanford patent is invention or it is not. If it is invention on any ground, defendant, as found by both courts below, has appropriated it, and there is no need for this court to review that finding.

Respectfully submitted,

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